

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-140

In the Matter of

Review of Technical and Operational
Requirements: Part 73-C
Noncommercial Educational FM
Broadcast Stations

REPORT AND ORDER

Adopted: October 21, 1987; Released: November 4, 1987

By the Commission:

INTRODUCTION

1. The Commission has before it a *Notice of Proposed Rule Making*¹ (*Notice*) recommending that the same domestic standards apply to noncommercial educational FM (NCE-FM) broadcasting stations within 199 miles (320 kilometers) of the United States-Mexican border (border area) as are used in the rest of the United States. No change in the international procedures was contemplated. This *Report and Order* adopts the proposed rules, which will allow applicants to submit applications based on the non-overlap of predicted signal strength contours (contour method) with respect to domestic NCE-FMs, provided that the minimum mileage separation requirements are satisfied with respect to Mexican stations. Domestic NCE-FM stations will still be subject to the obligations of the international agreement concerning FM broadcasting between the United States and Mexico (Mexican Agreement).²

BACKGROUND

2. Applicants for NCE-FM stations in affected communities of Arizona, California, New Mexico, and Texas, must consult a table of NCE-FM allotments (separate from the Table of Allotments for commercial FM stations) in order to determine available reserved band channels (channels 201-220, inclusive) allotted for these communities. They may be allowed to use vacant allotments or may petition to amend the table. In order to amend the table, the applicant is required to observe mileage separations from Mexican and domestic stations as prescribed in Section 73.207(b)(3) of the Commission's rules. The table, which included vacant border area allotments from its inception, was developed in order to protect and encourage the development of the NCE-FM service in that region.

3. In the *Notice*, the Commission concluded that requiring applicants to observe the same set of mileage separations from domestic NCE-FM stations as from Mexican stations might be unwarranted. We noted that there had been no problems in the Canadian border area using

the contour method with respect to domestic NCE-FMs and a mileage table with respect to Canadian stations.³ In addition, the *Notice* indicated that without applying rigid domestic separation requirements there probably would be an increase in the number of border area NCE-FM stations. Specifically, stations would be allowed to tailor their coverage to fit their particular service area (e.g., by the use of directional antennas). Therefore, we proposed to eliminate the allotment table and allow applicants to base their spacings to domestic NCE-FMs on the signal strength contours of the proposed station and stations operating co-channel and on the first, second, and third adjacent channels. In this regard, we proposed to apply a 1.0 millivolt per meter (mV/m) coverage contour value uniformly to all NCE-FMs regardless of class, as we do in the rest of the United States. All of the comments we received are in favor of changing to a contour-based application procedure. However, two commenters have reservations about eliminating the allotment table for the border area.

DISCUSSION

4. Currently, a proposed station could meet the separation requirements of the Mexican Agreement, but be denied an allotment because it is short spaced to a domestic NCE-FM station. In supporting rule changes to correct this anomaly, the commenters point out the public interest benefits of a contour-based applications procedure. The National Telecommunications and Information Administration (NTIA) states that adoption of that proposal would increase the flexibility of our frequency assignment process, and agreed with our prediction that the proposal would allow an increase in the number of NCE-FM operators in the border area. California Lutheran University (CLU) agrees, adding that use of the contour method would serve the public interest by allowing the establishment of NCE-FM stations in many more areas than could be served with use of the mileage separation method.⁴ In agreeing with the major thrust of our proposal, the Rocky Mountain Corporation for Public Broadcasting (RMCPB) notes that the tailoring of facilities (by use of the contour method) to cover the desired audience is clearly advantageous to public radio development and extension. National Public Radio (NPR) also concurs noting the location flexibility that the contour method allows. Finally, John J. Davis, a consulting engineer, while expressing his support for our proposal to adopt the contour method, raises the question of the disparate treatment of overheight power reduction in the border area and in the rest of the United States.⁵

5. The unanimous approval in the comments for our proposal to allow NCE-FMs in the border area to base their interstation domestic NCE-FM spacing on the contour method reinforces our belief that such action is in the public interest. Therefore, we will adopt that proposal as it was presented. Domestic NCE-FM spacing will be determined for the border area as it is in the rest of the country. Consequently, the concept of the 1.0 mV/m protected service contour will be extended to the border area.

6. As a corollary to the adoption of the contour method, we proposed also to eliminate the table of allotments for NCE-FMs in the border area. Under the new proposed rules, an NCE-FM station applicant would not need an allotment established in order to apply for an assignment. Instead, assignments would be handled on a "demand basis."⁶ NTIA supports the Commission's proposal stating

that it will result in faster service to the public with less expense to the NCE-FM broadcasters. It noted the allotment-assignment procedure has caused delays in issuing federal funds through NTIA, and that potential broadcasters may have been discouraged from submitting applications for stations because of the excessive time and expense involved under the current frequency assignment procedure. CLU observed that the elimination of the table would be consistent with our decision in previous proceedings not to adopt a nationwide assignment table for NCE-FM stations.⁷

7. Not all commenters are in favor of eliminating the allotment table for the border area, however. NPR suggested that we seek alternate methods to implement the contour method without eliminating the table, due to what it perceives as a detrimental side-effect of the table's demise. NPR contends that expansion by commercial FM stations broadcasting on the three lowermost commercial FM channels (221, 222, and 223), could deny the future availability of the three uppermost reserved band channels (218, 219, and 220).⁸ In addition, NPR is concerned that the need to protect from intermediate frequency (IF) interference⁹ those commercial stations broadcasting at 10.6 or 10.8 MHz above the frequencies assigned for the reserved band, would limit availability of useable NCE-FM spectrum. NPR is also concerned that the constraints, comprised of mileage separation, power limits and other requirements, that are imposed by operation of TV Channel 6 (which is just below the reserved band and adjacent to it) could further infringe upon useable NCE-FM spectrum. RMCPB expresses concerns similar to NPR, although it does not mention TV-6 constraints.

8. The arguments favoring retention of the allotment table for border area NCE-FM stations are not convincing. We believe the allotment-assignment procedure has been shown to be unnecessary by the adequate handling of frequency assignments for NCE-FM in the rest of the country using the demand system. Also, desired assignments in relatively unpopulated areas (for which NPR and RMCPB expressed particular concern) are readily available under the demand system, regardless of commercial growth on the adjacent channels. Thus, we conclude that the concerns raised by some of the commenters are unwarranted in light of the adequacy of already existing rules for NCE-FM stations. Accordingly, we will eliminate the table of allotments for the border area from our rules as proposed.¹⁰

CONCLUSION

9. The action we take herein will allow border area NCE-FM station applicants to base their spacings to domestic NCE-FMs on the contour method, provided they observe required mileages to Mexican assignments as established in the Mexican Agreement. We will also eliminate the table of allotments for NCE-FMs in the border area. Although our method of spectrum assignment will change as a result of this rule-change, application procedures will remain the same for new stations and for stations requesting to upgrade existing facilities. This policy should encourage the growth of the NCE-FM service in the border area, and make our NCE-FM assignment policy consistent throughout the United States.

PROCEDURAL MATTERS

10. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public.

11. The Secretary SHALL CAUSE a copy of this *Report and Order*, including the Final Regulatory Analysis in Appendix A, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub.L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §601 *et seq.*, (1981).

12. Accordingly, IT IS ORDERED that under authority contained in Section 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules IS AMENDED as set forth in Appendix C below, effective **December 18, 1987**.

13. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need for and Purpose of this action: This action is needed in order to encourage the future growth of NCE-FM in the border area, in addition to establishing a uniform NCE-FM station application procedure throughout the United States.

II. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues raised. No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis.

B. Changes made as a result of comments. No significant changes were made as a result of comments.

III. Significant alternatives considered and rejected. We have considered the proposals in the *Notice* and the comments in this proceeding. After full consideration of all of the issues raised throughout the course of this proceeding, we have adopted the rules that we believe are the most reasonable.

IV. Impact on Small Businesses. This rule-change should benefit small businesses by allowing small NCE-FM broadcasters to obtain station assignments in an easier, quicker, and less costly manner. Additionally, increasing the number of NCE-FM stations benefits many types of small businesses, as the demand increases for services related to the operation of those stations.

APPENDIX B

List of Commenters

Initial Comments

1. John J. Davis, P.E.
2. Joint Comments filed by The Regents of the University of California, California State University Long Beach Foundation, and California Lutheran University
3. National Public Radio
4. National Telecommunication and Information Administration (Informal)
5. California Lutheran University
6. Rocky Mountain Corporation for Public Broadcasting

There were no reply comments.

APPENDIX C

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citations for Part 73 continue to read as follows:

Authority: 47 U.S.C. Secs. 154 and 303.

2. § 73.202 is amended by revising subparagraph (a)(1) to read as follows:

§ 73.202 Table of Allotments.

(a)(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast stations. The rules governing the use of those channels are contained in § 73.501.

3. § 73.501 is amended by removing paragraph (c).

4. § 73.504 is amended by revising the title, revising paragraph (a) and removing the table of channel assignments following paragraph (a); revising paragraph (b); removing paragraph (c); revising paragraph (d) and changing the designation of paragraph (d) to (c). The section is to read as follows:

§ 73.504 Channel assignments in the Mexican border area.

(a) NCE-FM stations within 199 miles (320 km) of the United States-Mexican border shall comply with the separation requirements and other provisions of the "Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation Broadcasting in the 88 to 108 MHz Band" as amended.

(b) Applicants for noncommercial educational FM stations within 199 miles (320 km) of the United States-Mexican border shall propose at least Class A minimum facilities (see § 73.211(a)). However, existing Class D non-commercial educational stations may apply to change frequency within the educational portion of the FM band in accordance with the requirements set forth in § 73.512.

(c) Section 73.208 of this chapter shall be complied with as to the determination of reference points and distance computations used in applications for new or changed facilities. However, if it is necessary to consider a Mexican channel assignment or authorization, the computation of distance will be determined as follows: if a transmitter site has been established, on the basis of the coordinates of the site; if a transmitter site has not been established, on the basis of the reference coordinates of the community, town, or city.

5. § 73.509 is amended by revising paragraph (a) to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a new or modified NCE-FM station other than a Class D (secondary) station will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station licensed by the Commission and operating in the reserved band (Channels 200 - 220, inclusive) as set forth below:

FOOTNOTES

¹ See *Notice of Proposed Rule Making* in MM Docket No. 87-140, released June 19, 1987, 52 FR 23873.

² "Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation in the 88 to 108 MHz Band," ratified in Washington, D.C., November 9, 1972. Pertinent provisions of the agreement are contained in 47 CFR §§ 73.207 and 73.504. See *Report and Order* in Docket No. 19987, 50 FCC 2d 172 (1974).

³ Use of the contour method for domestic NCE-FM interstation spacing in the Canadian border area is done pursuant to the "Canada-U.S.A. FM Broadcast Agreement of 1947.

⁴ CLU and other parties involved in a mutually exclusive allotment proceeding, MM Docket No. 85-230, have requested that we exempt their pending border area allotment requests from the effects of this proceeding. The request is denied, as we never contemplated nor did we propose that pending allotment proceedings for the border area should be immune from the effects of the new rule.

⁵ We did not address in the *Notice* the issue of border area overheight power reduction (in which FM stations may exceed the allowable antenna height, provided they reduce power below the maximum so that the distance to the 1 mV/m contour extends no farther than it would were the station operating with a maximum power/height combination). Accordingly, we make no attempt to resolve it here. Nevertheless, it is true that our policy is different for the border area than it is for the rest of the United States. Any change in this regard must await negotiation of a new agreement with Mexico.

⁶ "Demand basis" frequency assignment allows the applicant to propose to locate a station virtually anywhere, provided the location, in conjunction with the proposed facilities, satisfies the technical standards designed to prevent objectionable interference between FM stations. Thus, if the location of a station would result in its compatibility with the existing radio environment, it would be technically acceptable to the Commission.

⁷ In the Second Further Notice of Proposed Rulemaking in Docket No. 20735, Changes in the Rules Relating to NCE-FM, 47 FR 24144, 153, (1982), for example, we considered this issue and refused to adopt a nationwide allotment table for NCE-FM stations.

⁸ NCE-FM applicants on the uppermost three reserved band channels are required to observe mileage separations to commercial stations on the lowermost three commercial channels. See 47 CFR § 73.507.

⁹ IF interference is a phenomenon that can occur in the FM receiver if two relatively strong signals are received whose channels are 10.6 or 10.8 MHz (53 or 54 channels) apart. To prevent reception of two such strong FM signals mileage separations between two such stations have been imposed. See 47 CFR § 73.207.

¹⁰ Although the domestic border area NCE-FM table of allotments will be eliminated from our Rules, this does not affect the original list of allotments contained in the Mexican Agreement nor subsequent revisions accepted by the U.S. and Mexico.